

Memorandum

To : Mr. Ramon J. Hirsig,
Executive Director – MIC: 73

Date: December 2, 2004

From : Randie L. Henry, Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1566, *Automobile Dealers and Salesmen*
Chief Counsel's Rulemaking Calendar – December 14, 2004

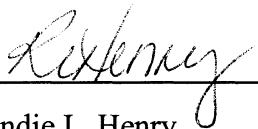
I am requesting your approval to place proposed amendments to Regulation 1566, *Automobile Dealers and Salesmen*, on the Chief Counsel's Rulemaking Calendar on December 14, 2004 for Board approval.

The proposed amendments would:

1. Amend title of subdivision (d) to refer to vehicles, vessels, and aircraft, delete existing text of subdivision (d), and replace with text referencing subdivision (b)(5) of Regulation 1620. Subdivision (b)(5) of Regulation 1620 incorporates the provisions of SB 1100 (Stats. 2004, Ch. 226), which amended section 6248 of the Revenue and Taxation Code. This section is operative October 2, 2004, and provides that, until July 1, 2006, it is rebuttably presumed that a vehicle, vessel, or aircraft purchased outside this state and brought into California within 12 months from the date of purchase is purchased for use in California and is subject to California use tax, except as specified.
2. Delete gender specific language and make capitalization changes due to changes in citation conventions since the regulation was originally drafted.
3. Delete obsolete language from subdivisions (c) and (d). The deleted language in 1566(c) concerns the application of tax to sales to members of the armed services prior to January 1, 1977. The deleted language in subdivision (d) provides that the 90-day test should apply to vehicles ordered on or after October 1, 1970.

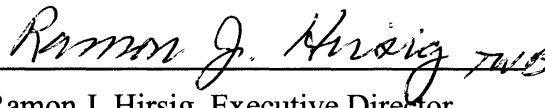
The regulation will be amended in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process. If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Recommendation by:



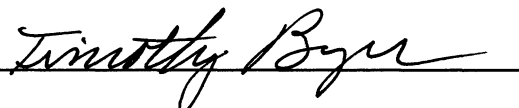
Randie L. Henry
Deputy Director, Sales and Use Tax Department

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Jerry Cornelius (MIC 44)
Ms. Susanne Buehler (MIC 40)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

(a) **DEALER AID TO SALESMEN REPRESENTATIVES.** An automobile dealer, pursuant to ~~Section~~ 6015, is regarded as the retailer of tangible personal property sold by ~~his salesmen~~ the dealer's sales representatives in their own behalf if ~~he~~ the dealer aids ~~his salesmen~~ the sales representatives in making such sales in either of the following ways:

- (1) By reporting the ~~salesmen~~ representatives' sales on the dealer's report of sales to the Department of Motor Vehicles.
- (2) By executing conditional sales agreements with respect to such ~~salesmen~~ representatives' sales in which the dealer appears as the seller.

Dealers who aid their ~~salesmen~~ representatives by acting as guarantors on conditional sales agreements executed by the ~~salesmen~~ representatives or by requiring or permitting the ~~salesmen~~ representatives to use the dealer's showroom or other facilities in making such sales are not required to pay tax on the sale of the vehicles. The purchasers from these ~~salesmen~~ representatives, and from ~~salesmen~~ representatives making sales without dealer aid, must pay the use tax to the Department of Motor Vehicles.

(b) **RESALE CERTIFICATES FROM NONDEALER RETAILERS.** A dealer who is licensed or certificated pursuant to the California Vehicle Code and who sells a vehicle to a retailer who is not regularly engaged in selling or leasing vehicles should accept a resale certificate only if it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

Unless the person named as the purchaser on the resale certificate is also named on the dealer's report of sale and application for registration, either singly or jointly as registered owner, the sale will be regarded as a retail sale subject to sales tax, and the resale certificate will not be honored, whether or not it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

(c) **SALES TO MEMBERS OF THE ARMED SERVICES.** A dealer (or manufacturer or dismantler) who is licensed or certificated pursuant to the California Vehicle Code must report and pay sales tax to the ~~Board~~ Board with respect to the sale of a vehicle in California to a member of the armed services regardless of the service member's place of residence. A dealer (or manufacturer or dismantler) so licensed or certificated who sells a vehicle outside of California to a member of the armed services for use in California must collect use tax from the service member and remit it to the ~~Board~~ Board unless the sale is made to a service member on active duty, prior to the effective date of discharge and the intention to use the vehicle in California results from official transfer orders to California and not from the service member's own independent determination. The service member will be considered to have made an independent determination to use the vehicle in California if the contract to purchase the vehicle is made after the service member receives official transfer orders to California or if at the time the contract to purchase the vehicle is made the service member arranges to take receipt of the vehicle in California. ~~With respect to purchases made prior to January 1, 1977, however, the service member shall not be deemed to have purchased the vehicle for use in this state, whether the vehicle was made prior to the receipt of official transfer orders to California. The preceding sentence shall not affect the application of sales tax with respect to vehicles delivered in this state.~~

(d) OUT-OF-STATE PURCHASES OF VEHICLES—90-DAY TEST

Regarding the applicability of tax to the out-of-state purchase of a vehicle, see subdivision (b) of Regulation 1620 (18 CCR 1620).

~~(1) For the purpose of determining whether a vehicle which is purchased outside California is purchased for use in this state it is presumed that the vehicle was purchased for use here if it enters California within 90 days after its purchase. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the purchaser did not intend to use the vehicle in this state.~~

~~(2) Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the vehicle was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, will be accepted as proof of an intent that the vehicle was not purchased for use in California. Accordingly, when a vehicle is purchased in a foreign country or in another state and is later shipped to California, the period of use for purposes of the 90-day test will be measured by the interval from the time the purchaser takes possession at the out-of-state point to the time when the vehicle is delivered to a shipping agent or placed in storage for shipment to California.~~

~~This subsection applies with respect to vehicles ordered on or after October 1, 1970.~~